

"In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (b) shall include obtaining the following records if relevant to the claim:

"(1) The claimant's service medical records and, if the claimant has furnished the Secretary information sufficient to locate such records, other relevant records pertaining to the claimant's active military, naval, or air service that are held or maintained by a governmental entity.

"(2) Records of relevant medical treatment or examination of the claimant at Department health-care facilities or at the expense of the Department, if the claimant furnishes information sufficient to locate those records.

"(3) Any other relevant records held by any Federal department or agency that the claimant adequately identifies and authorizes the Secretary to obtain."

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims, see section 2(x) of Pub. L. 115-55, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-154, title V, § 505(c), Aug. 6, 2012, 126 Stat. 1193, provided that:

"(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [Aug. 6, 2012] and shall apply with respect to assistance obligations of the Secretary of Veterans Affairs on or after such date.

"(2) CONSTRUCTION.—Nothing in this section [amending this section] or the amendments made by this section shall be construed to require the Secretary to carry out assistance in accordance with requirements of section 5103A of title 38, United States Code, as in effect on the day before the effective date established in paragraph (1) on or after such effective date."

§ 5104. Decisions and notices of decisions

(a) In the case of a decision by the Secretary under section 511 of this title affecting the provision of benefits to a claimant, the Secretary shall, on a timely basis, provide to the claimant (and to the claimant's representative) notice of such decision. The notice shall include an explanation of the procedure for obtaining review of the decision.

(b) Each notice provided under subsection (a) shall also include all of the following:

- (1) Identification of the issues adjudicated.
- (2) A summary of the evidence considered by the Secretary.
- (3) A summary of the applicable laws and regulations.
- (4) Identification of findings favorable to the claimant.
- (5) In the case of a denial, identification of elements not satisfied leading to the denial.
- (6) An explanation of how to obtain or access evidence used in making the decision.
- (7) If applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation.

(Added Pub. L. 101-237, title I, § 115(a)(1), Dec. 18, 1989, 103 Stat. 2065, § 3004; renumbered § 5104, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-54, § 14(d)(1), June 13, 1991, 105 Stat. 285; Pub. L. 103-446, title XII, § 1201(d)(15), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 115-55, § 2(e), Aug. 23, 2017, 131 Stat. 1106.)

APPLICABILITY OF AMENDMENT

Amendment of section by section 2(e) of Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under this section on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims. See 2017 Amendment note below.

PRIOR PROVISIONS

Prior section 5104 was renumbered section 8304 of this title.

AMENDMENTS

2017—Subsec. (b). Pub. L. 115-55 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "In any case where the Secretary denies a benefit sought, the notice required by subsection (a) shall also include (1) a statement of the reasons for the decision, and (2) a summary of the evidence considered by the Secretary."

1994—Subsec. (a). Pub. L. 103-446 substituted "section 511" for "section 211(a)".

1991—Pub. L. 102-40 renumbered section 3004 of this title as this section.

Pub. L. 102-54 amended section as in effect immediately before enactment of Pub. L. 102-40 by striking out "(1)" after "(a)" and substituting "(b)" for "(2)", "subsection (a)" for "paragraph (1) of this subsection", "(1)" for "(A)", and "(2)" for "(B)".

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under this section on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims, see section 2(x) of Pub. L. 115-55, set out as a note under section 101 of this title.

EFFECTIVE DATE

Pub. L. 101-237, title I, § 115(b), Dec. 18, 1989, 103 Stat. 2066, provided that: "Section 3004 [now 5104] of title 38, United States Code, as added by subsection (a), shall apply with respect to decisions by the Secretary of Veterans Affairs made after January 31, 1990."

§ 5104A. Binding nature of favorable findings

Any finding favorable to the claimant as described in section 5104(b)(4) of this title shall be binding on all subsequent adjudicators within the Department, unless clear and convincing evidence is shown to the contrary to rebut such favorable finding.

(Added Pub. L. 115-55, § 2(f)(1), Aug. 23, 2017, 131 Stat. 1107.)